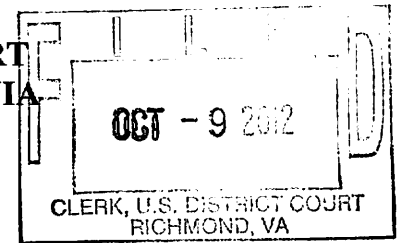


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**



UNITED STATES OF AMERICA

v.

TIMMY O. BROWN,

Petitioner.

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Criminal No. 3:08CR313-HEH

**MEMORANDUM OPINION
(Accepting Report and Recommendation
and Denying 28 U.S.C. § 2255 Motion)**

Timmy O. Brown ("Petitioner"), a federal inmate proceeding *pro se*, filed this motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Petitioner contends that he is entitled to relief because he did not receive the effective assistance of counsel. Specifically, Petitioner contends:

Claim 1 Counsel failed to file an appeal as directed.

Claim 2 "[A]t the plea negotiation and at the change of plea hearing . . . counsel labored under an actual conflict of interest." (§ 2255 Mot. 5.)


By Memorandum Opinion and Order entered December 29, 2011, the Court dismissed Claim 2 and referred Claim 1 to the Magistrate Judge for an evidentiary hearing.

On May 8, 2012, the Government filed a Motion for Leave to File wherein it sought to introduce evidence which tended to show the statute of limitations barred Claim 1. On May 22, 2012, the parties appeared before the Magistrate Judge for the scheduled evidentiary hearing. On August 2, 2012, the Magistrate Judge issued a Report and Recommendation ("R&R") which recommended the dismissal of Claim 2 as lacking

in merit. The R&R further recommended that the Court deny the Motion for Leave to File as Moot. In the R&R, the Magistrate Judge advised the parties they had fourteen (14) days in which to file specific written objections. More than fourteen (14) days have elapsed since the entry of the August 2, 2012 R&R and no objections have been filed. Accordingly, the R&R (Dk. No. 75) will be accepted and adopted. Claim 1 will be dismissed. The 28 U.S.C. § 2255 Motion (Dk. No. 47) will be denied and the action will be dismissed. The Motion for Leave to File (Dk. No. 65) will be denied as moot.

An appeal may not be taken from the final order in a § 2255 proceeding unless a judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1)(B). A COA will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). For the reasons stated more fully in the R&R, no law or evidence suggests that Brown is entitled to further consideration in this matter. A certificate of appealability is therefore denied.

An appropriate Order shall accompany this Memorandum Opinion.

 /s/
HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE

Date: 0675, 2012
Richmond, Virginia